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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 58

TRINIDAD, AS INSULAR COLLECTOR OF INTERNAL
VENUE OF THE PHILIPPINE ISLANDS, PETITIONER,

vs.

AGRADA ORDEN DE PREDICADORES DE LA PROVINCIA
DEL SANTISIMO ROSARIO DE FILIPINAS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

PETITION FOR CERTIORARI FILED JUNE 9, 1923.

CERTIORARI AND RETURN FILED APRIL 10, 1924.

(28,973)



(28,973)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 423.

W. TRINIDAD, AS INSULAR COLLECTOR OF INTERNAL
REVENUE OF THE PHILIPPINE ISLANDS, PETITIONER,

vs.

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA
DEL SANTISIMO ROSARIO DE FILIPINAS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

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United States of America

Philippine Islands

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

[Case No. 18274.]

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA DEL SANTÍSIMO ROSARIO DE FILIPINAS, Plaintiff and Appellee,

VERSUS

W. TRINIDAD, as Insular Collector of Internal Revenue of the Philippine Islands, Defendant and Appellant.

APPELLATE JURISDICTION

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled action, to wit:

On the 16th day of April, 1920, the plaintiff filed in the Office of the Clerk of the Court of First Instance of Manila, a complaint against the defendant, W. Trinidad, as follows:

[Caption and title omitted.]

Comes now the plaintiff, through the undersigned attorneys, and as a cause of action to this Honorable Court, alleges:

I

That the herein plaintiff is a corporation sole organized under the laws of these Islands and known by the

name of *Sagrada Orden de Predicadores de la Provincia del Santísimo Rosario de Filipinas*, also by the shorter name of *Corporación de Padres Dominicos*.

II

That the defendant was, and still is, the Collector of Internal Revenue of the Government of the Philippine Islands, duly appointed, qualified, and acting as such during the period of time to which the facts hereinafter alleged refer.

III

That on or about the 28th day of June, 1918, and some time after said date the defendant required the plaintiff to render a statement of its income from the year 1913 to the year 1917 inclusive and to pay the income tax provided for by the Laws of Congress of October 3, 1913 and September 8, 1916, with the understanding that if plaintiff did not so render said statement, defendant would cause it to be prepared according to the information he might have available.

IV

That on the 8th day of July, plaintiff answering said requirement stated to the defendant that, according to the provisions of the above mentioned laws and for the reasons stated in an affidavit to support its contention, a copy of which marked Exhibit A is attached to this complaint and made a part of the same, it was exempted from paying said tax.

V

That in spite of the reasons above mentioned, the defendant in his official capacity as Collector of Internal Revenue, willfully, unlawfully, and arbitrarily, without express authority in law, and contrary to its provisions, required the plaintiff to pay the sum of ₱1,541.31, as income tax of the plaintiff corporation from March 1 to December 31, 1913.

VI

That the herein plaintiff protested the collection of said tax and made known its protest before and at the time

of making the payment of one thousand five hundred forty-one pesos and thirty-one centavos (₱1,541.31), Philippine Currency, the sum of money paid to the defendant on the 10th day of October, 1919, at his order and to avoid greater penalties which the defendant might impose on the plaintiff should the latter refuse to make said payment.

VII

That for the reasons above stated said defendant is unlawfully in possession of the sum of ₱1,541.31 belonging to the plaintiff.

Wherefore, plaintiff prays this Court to render judgment ordering the defendant to return to the plaintiff the sum of one thousand five hundred* forty-one pesos and thirty-one centavos (₱1,541.31) plus legal interests from the 10th day of October, 1919, when payment was made under protest, and to pay the costs of this action.

MANILA, P. I., April 16, 1920.

(Sgd.) ALFREDO CHICOTE,

JOSE ARNAIZ,

Attorneys for the Plaintiff.

Address: 50 Beaterio St., Manila.

On the 20th day of May, 1920, the Attorney-General, on behalf of the Collector of Internal Revenue filed the following answer:

[Caption and title omitted.]

Comes now the defendant, by the undersigned Attorney-General, and in answer to plaintiff's complaint, alleges:

I

That he admits the allegation contained in paragraphs 1, 2, 3 and 6 of the complaint.

II

That he denies all and singular all the other allegations contained in said complaint, with the exception of those which, in his special defense, are expressly admitted.

III

As a special defense the defendant alleges:

1. That the plaintiff corporation was not operated ex-

clusively for religious, charitable, scientific or educational purposes, and that during the period from March 1 to December 31, 1913, it derived an income of ₱154,130.68 from rents, dividends, interests, and sundry business transactions.

2. That on said income there became due and payable from the plaintiff the sum of ₱1,541.31 as income tax under the provisions of the Federal Income Tax Law of 1913.

3. That the collection of this tax was authorized by law and plaintiff is not entitled to its refund.

MANILA, May 20, 1920.

QUINTIN PAREDES,
Attorney-General.

* By (Sgd.) F. R. FERIA,
*Assistant Attorney,
Bureau of Justice.*

On the 17th day of September, 1920, the case was heard by Hon. Judge Simplicio del Rosario.

On the 12th day of October, 1920, the court rendered the following decision:

[Caption and title omitted.]

DECISION

The parties entered into the following agreement:

"That the plaintiff is a corporation sole constituted under sections 154 to 164 of Act No. 1459 of the Philippine Commission, and is organized and operated for religious, beneficial, scientific and educational purposes in these Islands and in its Missions in China, CochinChina and Japan, and that neither its net income nor part of its rents from whatever source it may come is applied to the benefit of any particular stockholder or individual, or of any of its members, and that no part of the whole or of some of its temporal properties belong to any of its members, who have no rights to the same, even in case of dissolution of the corporation.

"That the dividends and interests or profits and expenses which appear in Exhibit 1 of the defendant as the income of the plaintiff, constitute the income derived from the investments of the capital of the plaintiff corporation, which

was invested, in the year 1913, nearly in the manner and form specified in Exhibit 2 of the defendant, and that the rents appearing in Exhibit 1 were derived from the properties which together with their valuations appear in Exhibit 3 of the defendant."

The sum of ₱1,541.31 which is now sought to be recovered is the tax on the income of the plaintiff corporation from March 1 to December 31, 1913, which it paid to the defendant under protest on October 10, 1919, notwithstanding the fact that the corporation did not think it was under the obligation so to do, but only to avoid greater penalties.

The plaintiff corporation alleges that it is exempt from paying said income tax, under the provisions of the Act of Congress of October 3, 1913, letter (g) on the one hand, and under those of another law of the same Congress of September 8, 1916, section 11, paragraph 6, on the other, because it is a corporation sole constituted according to the provisions of Act No. 1459 and for religious, beneficial, scientific and educational purposes in these Islands and in its missions in China, Cochinchina, and Japan.

The provisions of law above quoted unanimously provide that corporations and associations organized and operated exclusively for religious, beneficial, scientific and educational purposes and whose net income in no part is applied to the benefit of any stockholder or individual, shall be exempt from paying the income tax.

If, as the defendant admits, the rents which the plaintiff corporation earn, from whatever source they may come, are not applied for the benefit of any of its stockholders or members, and that no part of its temporal properties belongs to any of them, inasmuch as they have no rights to them even in case of the dissolution of the corporation, and it being further admitted, as the general public knows, that said corporation is devoted to religious, beneficial, scientific and educational ends and is composed of members who, among other solemn vows, have that of poverty, it is undeniable that said corporation is included within the exemption provided for by both laws and is not under obligation to pay the tax on its income.

But the defendant maintains that the plaintiff corporation is not organized exclusively for religious, educational and charitable purposes but also for commercial and lucrative ends inasmuch as its property includes shares of some companies, real properties which produce rent, makes loans with interest, and sells merchandise.

Such means of making the properties of the corporation earn rents, do not destroy the ends for which it was constituted inasmuch as to develop the activities for which it was established, it must perforce obtain from its properties, in any manner allowed by law, the rents which it needs for a lengthy, broad and important enterprise such as according to the agreed statement of facts, is carried on by the corporation not only in these Islands, as the general public knows, but also in its Missions in China, Cochinchina, and Japan.

Having in mind the very ancient existence of said religious corporation, and taking into consideration its nature and purposes which cannot be compared with agricultural, mercantile, industrial and other kinds of corporations, and considering the great number of its members who must have a decent support, if the property—which is not unlimited—belonging to the religious corporation, the herein plaintiff, were not to be invested in the most productive manner, it would soon be exhausted, and, as a consequence thereof, the ends to which it was established may come to naught, to the prejudice of that part of humanity which is benefited thereby.

The return of the sum of money should therefore be granted.

The defendant is ordered to return, with legal interests from October 10, 1919, to the plaintiff corporation the sum of one thousand five hundred forty-one pesos and thirty-one centavos (P1,541.31) paid him, and the costs of the action.

(Sgd.) S. DEL ROSARIO,
Judge.

MANILA, October 12, 1920.

EVIDENCE SUBMITTED

I. For the plaintiff:

EXHIBIT A

AFFIDAVIT

I, Fr. Serapio Tamayo, priest, of legal age, after being duly sworn, state: That I constitute the corporation sole entitled *Corporación de Padres Dominicos de la Provincia del Santísimo Rosario de Filipinas*, also known under the name *Corporación de Padres Dominicos de Filipinas*; that this corporation is duly constituted and existing according to the laws of these Islands and organized and operated exclusively for religious, educational and beneficial purposes; that all the income earned by this corporation is exclusively applied to the maintenance and support of the needs for which it was created, and no part of its net income is applied for the benefit of its members, or of any other person or entity, with the exception of the financial help which, from its funds, is under obligation to render the following entities constituted and organized for educational purposes, to wit: *Universidad de Sto. Tomás* and *Colegio de San Juan de Letrán*, in Manila; *San Alberto Magno*, in Dagupan, Pangasinan; *San Jacinto* in Tuguegarao, Cagayan; *Santa Catalina* in Manila; *Santa Rita* in Santa Rita, Pampanga; *Santísimo Rosario* in Lingayen, Pangasinan, and other institutions of similar nature in foreign countries, all of which are branches of this corporation but devoted to scientific, educational and beneficial purposes.

In testimony whereof, I affix my signature in Manila this 8th day of July, 1918.

(Sgd.) Fr. SERAPIO TAMAYO.

Subscribed and sworn to before me this 8th day of July, 1918. Affiant exhibited to me his cedula No. F10211 issued in Manila the 19th day of January, 1918.

(Sgd.) JOSE ARNAIZ,
Notary Public till December 31, 1918.

II. For the Defendant:

EXHIBIT 1

STATEMENT OF INCOME AND EXPENDITURES OF THE "CORPORACION DE PADRES DOMINICOS" FROM JANUARY 1 TO DECEMBER 31, 1913.

	As declared	As investigated	For income tax purposes
INCOME:			
Received from Renta:			
Houses at San Gabriel	P87,108.77	P83,839.03	P83,839.03
House at Dulumbayan	852.49	852.49	852.49
Maytubig estates	2,753.87	2,753.87	2,753.87
Navotas estates	259.63	259.63	259.63
Cavite estates	167.23	167.23	167.23
San Juan del Monte estates		2,220.75	2,220.75
TOTAL	P91,141.60	P90,092.70	P90,092.70
Received from Dividends:			
Bank of the Philippine Islands	P21,015.92	P21,015.92	P21,015.92
Manila Ice Plant	5,505.00	6,052.50	6,052.50
Johnson Pickett Rope Company	636.00	636.00	636.00
Germinal Cigar and Cigarette Factory	761.12	761.12	761.12
Philippine Sugar Development Co.	68,000.00	68,000.00	68,000.00
TOTAL	P96,918.04	P96,465.54	P96,465.54
Received from Interests:			
Sundry persons and corporations	P54,239.19	P54,239.19	P54,239.19
Sundry Profits:			
Sales of 12 stocks, "Germinal Cigar and Cigarette Factory"		250.80	250.80
Sales of wine		2,711.15	2,711.15
Sales of Chocolate		3,219.21	3,219.21
Sales of Merchandise		608.00	608.00
Sales of religious articles		352.52	352.52
Other profits (unclassified)		288.88	288.88
Alms for mass, cash (donations)		6,475.00	6,475.00
TOTAL	P54,239.19	P68,144.45	P68,144.45
GRAND TOTAL	P241,298.92	P254,702.69	P254,702.69
EXPENDITURES:			
Expenses of Provincial Father—			
Laundry, lights, repairs to room, salary of servant, gifts and donations to janitors, alcoholics and others	P1,763.40	P1,763.40	P1,763.40
Subscription to newspapers	238.60	238.60	238.60
Drafts remitted to Spain for subsistence and other expenses of the priests residing in Madrid, Avila and Ocaña	58,937.67	58,937.67	
Subsistence of priest of the corp. (Manila)	30,000.00	30,000.00	30,000.00
Interests paid on deposits (Loans)	14,736.13	17,603.69	17,603.69
Interests credited to "Fondos de Seguro"	1,367.38	1,640.39	
Fixed expenditures	2,978.82	5,083.28	
Interests paid to banks	1,288.60	1,288.60	1,288.60
Loans sustained on stocks of:			
Metropole Hotel (sales of stock)	10,310.80	10,310.80	10,310.80
Manila Box Manufacturing Co. (liquidation)	425.00	425.00	425.00
Phil. Drug Co. (liquidation)		997.00	997.00
Sundry office expenses	4,875.27	4,875.27	4,875.27
Other expenses	2,243.52	2,243.52	2,243.52
Depreciation on houses for rents, convent and church (not charged off on books)	40,140.05		
TOTAL EXPENDITURES	P169,305.24	P135,407.22	P69,745.88

SUMMARY.

	As declared	As investigated	For income tax purposes
TOTAL GROSS INCOME.....	P241,298.92	P254,702.69	P254,702.69
TOTAL EXPENDITURES.....	169,306.24	135,407.22	69,745.88
TOTAL NET INCOME.....	P71,993.68	P119,295.47	P184,956.81

NOTE.—The income and expenditures shown in this statement are for twelve (12) months—January 1 to December 31, 1913. As the income-tax law went into force only on March 1, 1913, this office, therefore, should, in arriving at the taxable income of the above corporation, exclude the earnings received and expenditures incurred in the months of January and February of that year.

For 10 months—5/6 of P184,956.81—P154,130.68, on which the normal tax of 1 per cent should be calculated.

EXHIBIT 2

CAPITAL INVESTED

Bank of the Philippine Islands.....	P276,474.08
Manila Ice Plant.....	44,850.00
Metropole Hotel.....	13,000.00
Philippine Drug Store.....	13,046.00
Manila Box Manufacturing Company.....	10,360.00
Johnson Pickett Rope Company.....	5,300.00
Germinal Factory.....	7,001.68
"Filipinas" Insurance Company.....	10,010.00
TOTAL	P380,041.76

EXHIBIT 3

REAL ESTATES

Houses at San Gabriel	P1,169,210.00
House at Dulumbayan	13,000.00
Maytubig Estate	65,650.00
Cavite Estate	140,000.00
Convent and Church	1,888,353.00
TOTAL	3,276,213.00

On the 8th day of November, 1920, the defendant filed the following exception and motion for new trial:

[Heading and title omitted]

EXCEPTION AND MOTION FOR NEW TRIAL

Now comes the defendant, by his undersigned attorney, and excepts to the decision rendered in the above entitled case on the 12th of October, 1920, and moves this court to set aside the judgment rendered therein and grant a new trial of said action for the following reasons:

1. That the evidence presented does not justify the decision.

2. That the decision is contrary to law.

MANILA, November 8, 1920.

(Sgd.) F. R. FERIA,

Attorney-General, for Defendant.

On November 19, 1920, the foregoing motion for new trial was denied by the court; to the order denying the motion for new trial the defendant excepted forthwith and gave notice of intention to prepare and file a bill of exceptions for a review by the Supreme Court.

On the 1st day of December, 1920, the defendant filed his bill of exceptions.

On the 17th day of December, 1920, the record was received in the Supreme Court of the Philippine Islands and was then duly docketed.

On the 14th day of March, 1921, the defendant and appellant filed his brief.

On the 7th day of May, 1921, the plaintiff and appellee filed its brief.

On the 13th day of July, 1921, the case was finally submitted to the Supreme Court for decision on its merits.

Thereafter, on November 28, 1921, the Supreme Court of the Philippine Islands rendered its decision in the case, which said decision is in the words and figures following, to wit:

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

[G. R. No. 17221. Submitted July 13, 1921; Promulgated November 28, 1921.]

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA DEL SANTÍSIMO ROSARIO DE FILIPINAS, Plaintiff and Appellee,

VERSUS

WENCESLAO TRINIDAD, Collector of Internal Revenue, Defendant and Appellant.

Justices Present: The Chief Justice, Manuel Araullo, and Messrs. E. Finley Johnson, Thos. A. Street, Ramon Avanceña, Ignacio Villamor, and Norberto Romualdez.

DECISION.

JOHNSON, J.:

On the 10th day of October, 1919, the defendant Collector of Internal Revenue demanded of the plaintiff, and the latter paid under protest, the sum of ₱1,541.31 as income tax corresponding to the period from March 31 to December 31, 1913. To recover the said amount, together with legal interest thereon and the costs, the present action was commenced in the Court of First Instance of the City of Manila on the 6th day of April, 1920. From a judgment granting the prayer of the complaint the defendant has appealed to this Court.

The facts are stipulated by the parties as follows:

That the plaintiff is a corporation sole, constituted under sections 154 to 164 of Act No. 1459 of the Philippine Commission, and is organized and operated for religious, beneficial, scientific and educational purposes in these Islands and in its Missions in China, Cochinchina and Japan, and that neither its net income nor part of its rents from whatever source it may come is applied to the benefit of any particular stockholder or individual, or of any of its members, and that no part of the whole or of some of its temporal properties belong to any of its members, who have no rights to the same, even in case of dissolution of the corporation.

That the dividends and interests or profits and expenses which appear in Exhibit 1 of the defendant as the income of the plaintiff, constitute the income derived from the investments of the capital of the plaintiff corporation, which was invested, in the year 1913, nearly in the manner and form specified in Exhibit 2 of the defendant, and that the rents appearing in Exhibit 1 were derived from the properties which together with their valuations appear in Exhibit 3 of the defendant.

According to Exhibits 1, 2 and 3, above mentioned, the plaintiff received ₱90,092.70 for rents on lands and buildings situated in Manila, Cavite, and Rizal; ₱96,465.54 as dividends on shares of stock in the Bank of the Philippine Islands, *Fábrica de Hielo de Manila*, Johnson Pickett Rope Company, Germinal Cigar and Cigarette Factory, and Philippine Sugar Development Company; the sum of ₱54,239.19 as interests on money loaned and funds deposited in banks; and the sum of ₱68,144.45 as profits from sales of 12 Germinal Cigar and Cigarette Factory stocks, wines, chocolate, merchandise, religious articles and unclassified profits and donations. After expenditures had been deducted from these earnings, the defendant found the sum of ₱154,130.68 on which, according to the contention of the defendant, income tax should be imposed at the rate of 1 per cent under the provisions of the Federal Income Tax Law of 1913.

The only question presented by the appellant is whether the plaintiff-appellee is exempt from the payment of income tax under Paragraph G (a) of the Federal Income Tax Law of 1913 (Act of Congress of October 13, 1913). The pertinent part of said paragraph provides that "nothing in this section shall apply * * * to any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual."

The Act of Congress of February 24, 1919, contains a similar provision as follows:

Sec. 231. That the following organizations shall be exempt from taxation under this title—

* * * * *

(6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the pre-

vention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

As seen from the above *stipulation* of facts, the plaintiff is a corporation sole, "organized and constituted for religious, charitable, scientific and educational purposes," and that no part of its property or earnings belongs to, or inures to the benefit of, any of its members, who have no right to the same even in case of dissolution.

The only contention of the defendant-appellant is, that inasmuch as the plaintiff invested part of its capital in commercial and industrial enterprises, it cannot be said to have been operated *exclusively* for religious, charitable, scientific or educational purposes, and, therefore, it is not entitled to exemption under the above-quoted provisions of the law. Quoting from Mr. Holmes, in his work on the Federal Taxes, and from the ruling of the Commissioner of Internal Revenue of the United States, of May 15, 1919, appellant maintains that: "In order to be exempt, the corporation or association must meet three tests: (a) it must be organized and operated for one or more of the specified purposes; (b) it must be organized and operated exclusively for such purposes; and (c) no part of its income must inure to the benefit of private stockholders or individuals." Appellant contends that the plaintiff did not meet the second test; that it was not operated exclusively for religious, charitable, scientific or educational purposes.

It is not contended that any part of the profits derived by the plaintiff from the secular investments above referred to was devoted to, or used for, any other purpose than the carrying out of its religious and educational work. It is admitted, on the other hand, that no part thereof inured to any individual member of the plaintiff corporation. Neither is it even intimated by the appellant that the funds so invested by the appellee, as above indicated, were, at the time of their investment, needed by the plaintiff in order to carry out its religious or educational work. On the contrary, appellant himself says in his brief that "all these (funds) were in excess of the corporation's legitimate religious needs."

It appears, then, that the plaintiff invested its surplus funds on hand in the secular enterprises above mentioned in order to derive profits therefrom, to be used exclusively in its religious and educational work. The operation, therefore, though, of course, not religious or educational in nature, was made ultimately and exclusively for religious and educational purposes. We are therefore of the opinion that notwithstanding the investment of its surplus funds in the enterprises mentioned in defendant's Exhibits 2 and 3, the plaintiff corporation still continued to be "organized and operated exclusively for religious and educational purposes," and was, therefore, entitled to the exemption provided by law.

Wherefore, the judgment of the lower court is hereby affirmed, without any finding as to costs. Ten days after notice of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below. It is so ordered.

ARAULLO, *Ch. J.*, and STREET, AVANCEÑA, VILLAMOR, and ROMUALDEZ, *JJ.*, concur.

On November 29, 1921, the parties were duly notified of the foregoing decision, and, on December 10, 1921, the Clerk of the Supreme Court entered the following final judgment:

G. R. No. 17221

THE UNITED STATES OF AMERICA

SUPREME COURT OF THE PHILIPPINE ISLANDS

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA DEL SANTÍSIMO ROSARIO DE FILIPINAS, Plaintiff and Appellee,

VERSUS

WENCESLAO TRINIDAD, Collector of Internal Revenue, Defendant and Appellant.

JUDGMENT

DECEMBER 10, 1921.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties

for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the twenty-eighth day of November, A. D. nineteen hundred and twenty-one.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the twelfth day of October, nineteen hundred and twenty, and from which the above-entitled appeal was taken, be, and the same is hereby affirmed, without any finding as to costs.

[SEAL.]

V. ALBERT,

Certified Correct

Clerk of the Supreme Court
of the Philippine Islands.

On December 14, 1921, the defendant filed the following motion for reconsideration:

G. R. No. 17221

THE UNITED STATES OF AMERICA

SUPREME COURT OF THE PHILIPPINE ISLANDS

SAGRADA ORDEN DE PREDICADORES, etc., Plaintiff
and Appellee,

VERSUS

W. TRINIDAD, etc., Defendant and Appellant.

The ACTING ATTORNEY-GENERAL, for Appellant.
CHICOTE and ARNAIZ, for Appellee.

MOTION FOR RECONSIDERATION

Comes now the undersigned on behalf of the defendant and appellant and respectfully moves for a reconsideration of the decision rendered by this court in the above-entitled case on November 28, 1921, in so much as said decision

holds that the plaintiff corporation is entitled to the exemption provided by paragraph G (a) of the Act of Congress of October 3, 1913.

This motion is based on the following grounds:

1. That it is an established principle of law that an alleged grant of exemption from taxation is strictly construed, and "where it exists it should be carefully scrutinized and not permitted to extend either in scope or duration beyond what the terms of the concession clearly required." (37 Cyc. pp. 892-893). Applying this rule to the case at bar, the plaintiff corporation can not claim exemption under paragraph G (a) of the Act of Congress of October 3, 1913, because it is not a corporation *operated exclusively* for religious, charitable, scientific or educational purposes which is one of the conditions expressly required by said Act for purposes of exemption.

2. That the United States officer charged with the execution of the said Act of Congress, namely: the Commissioner of Internal Revenue of the United States, has already ruled that a corporation in the circumstances of the plaintiff is not entitled to exemption from income tax, and this ruling appears to be in accord with the language of the statute and has the support of respectable authorities. Thus, Holmes, in his work on Federal Taxes (p. 214), interprets a similar provision of the Income Tax Law of 1918 as follows:

In order to be exempt, the corporation or association must meet three tests: (a) it must be organized and operated for one or more of the specified purposes; (b) it must be organized and operated exclusively for such purposes; and (c) no part of its income must inure to the benefit of private stockholders or individuals.

As an instance he says:

Where a religious corporation owns a large quantity of farm lands and works it, and also manufactures and sells clothing and other articles for profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society.

3. That in view of the extent to which the plaintiff corporation is engaged in business, as shown by the nature

of its income, it would not seem to be fair to the other corporations which are also engaged in business to construe the statute as granting exemption in favor of plaintiff. Such exemption might easily put the other corporations out of competition.

MANILA, December 14, 1921.

PEDRO TUASON,
*Acting Attorney-General,
Attorney for Appellant.*

By ALEX. REYES,
*Assistant Attorney,
Bureau of Justice.*

On December 21, 1921, the Supreme Court denied said motion.

On December 27, 1921, the defendant filed the following petition:

G. R. No. 17221

UNITED STATES OF AMERICA

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA DEL SANTÍSIMO ROSARIO DE FILIPINAS, Plaintiff and Appellee,

VERSUS

WENCESLAO TRINIDAD, Collector of Internal Revenue,
Defendant and Appellant.

Comes now the Attorney-General on behalf of the defendant and appellant and excepts to the decision of this court in denying his motion for a rehearing in the above entitled action, and also excepts to the final judgment entered therein.

Notice is hereby given that the defendant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment

of this court, and said defendant hereby makes application for the retention of the record in said case in this court pending the preparation, printing and certification of said record and the presentation of said petition to the Supreme Court of the United States. The said defendant also prays for a stay of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States.

MANILA, December 24, 1921.

ANT. VILLA-REAL,
Attorney-General,

Attorney for defendant and appellant.

We received copy this 27th day of December, 1921.

CHICOTE and ARNAIZ

By VICENTE CRUZ.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing twenty (20) printed pages contain a true and correct translation and transcript of the record of the case entitled *Sagrada Orden de Predicadores de la Provincia del Santísimo Rosario de Filipinas*, Plaintiff and Appellee, vs. W. Trinidad, as Insular Collector of Internal Revenue of the Philippine Islands, Defendant and Appellant, for recovery of amount of money, bearing No. 17221 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 25th day of March, A. D. nineteen hundred and twenty-two.


V. ALBERT,

Clerk of the Supreme Court
of the Philippine Islands.



Writ of Certiorari and Return.

Filed Apr. 10, 1923.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the transcript of the record of the proceedings of this court in the case entitled *Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario de Filipinas*, Plaintiff and Appellee, vs. *W. Trinidad as Insular Collector of Internal Revenue of the Philippine Islands*, Defendant and Appellant, bearing No. 17,221 of the docket of this court, certified by me on the 25th day of March, 1922, for filing in the Supreme Court of the United States, was correct and complete as the same then appeared in this court.

I further certify that from the date of the said certification, March 25th, 1922, to the date hereof, the record and proceedings in the said case in this court contains no new and additional matter except the entry setting forth the receipt of the foregoing writ of certiorari of the Supreme Court of the United States on the sixth day of March, 1923, and except also the entry of the stipulation hereinafter set out.

In pursuance of the command of the said writ of certiorari I now hereby certify that on the sixth day of March, 1923, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

The Supreme Court of the United States.

[Title omitted.]

It is hereby stipulated that the transcript of record of the case entitled, in the court below, *Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario de Filipinas*, Plaintiff and Appellee, vs. *W. Trinidad as Insular Collector of Internal Revenue of the Philippine Islands*, Defendant and Appellant, bearing No. 17,221 of the docket of the Supreme Court of the Philippine Islands, heretofore filed in the Supreme Court of the United States, with the petition for the writ of certiorari, be taken as a return to the writ issued by the Supreme Court of the United States, dated the twenty-sixth day of October, 1922. Grant T. Trent, Attorney for the Petitioner in the Supreme Court of the United States. Gabriel La'o, Attorney for the Respondent in the Supreme Court of the United States. [Seal of the Supreme Court of the Philippine Islands.]

I further certify that the above is a true and correct copy of said stipulation and the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 7th day of March, 1923. V. Albert, Clerk of the Supreme Court of the Philippine Islands. [Seal of the Supreme Court of the Philippine Islands.]

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the Philippine Islands, Greeting:

Being informed that there is now pending before you a suit in which Wenceslao Trinidad, Collector of Internal Revenue, is appellant, and Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario de Filipinas, is appellee, G. R. No. 17221, which suit was removed into the said Supreme Court by virtue of an appeal from the Court of First Instance of Manila, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two. Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

[Endorsed:] Received Mar. 6, 1923, 8 A. M., Clerk's Office, Supreme Court Philippine Islands.

[File endorsement omitted.]

FILED

JUN 9 1922

WM. R. STANSBURY

CLERK

In the Supreme Court of the United States.

October Term, 1921.

No. ~~423~~ 53

W. TRINIDAD, AS INSULAR COLLECTOR OF INTERNAL
REVENUE OF THE PHILIPPINE ISLANDS, Petitioner,

vs.

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA
DEL SANTISIMO ROSARIO DE FILIPINAS, Respondent.

PETITION AND BRIEF

On Application for Writ of Certiorari to the Supreme Court
of the Philippine Islands.

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate.

LOGAN N. ROCK,
Captain, Judge Advocate,
Attorneys for Petitioner.

Of counsel,
CARL A. MAPES,
Solicitor, Internal Revenue.



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PETITION FOR WRIT OF CERTIORARI

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THE UNIVERSITY OF CHICAGO

In the Supreme Court of the United States.

October Term, 1921.

No. —

W. TRINIDAD, AS INSULAR COLLECTOR OF INTERNAL
REVENUE OF THE PHILIPPINE ISLANDS, Petitioner,

vs.

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA
DEL SANTISIMO ROSARIO DE FILIPINAS, Respondent.

PETITION AND BRIEF

On Application for Writ of Certiorari to the Supreme Court
of the Philippine Islands.

TO THE HONORABLE, THE SUPREME COURT OF THE
UNITED STATES:

W. Trinidad, as Insular Collector of Internal Revenue of the Philippine Islands, by his undersigned counsel, respectfully petitions this Honorable Court for a writ of certiorari addressed to the Supreme Court of the Philippine Islands in the case of "Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario De Filipinas, Plaintiff and Appellee, vs. W. Trinidad, as Insular Collector of Internal Revenue of the Philippine Islands, Defendant and Appellant, G. R. 17221, and in support of this petition shows:

First.—On October 10, 1919, the petitioner, as Collector of Internal Revenue of the Philippine Islands, demanded of the respondent, a corporation sole constituted under sections 154 to 164 of Act No. 1459 of the Philippine Commission, and the latter paid under protest the

sum of 1,541.31 pesos as income tax corresponding to the period from March 31, 1913, to December 31, 1913. To recover back this amount, together with legal interest and costs, the present action was commenced in the Court of First Instance of the City of Manila, P. I., on April 6, 1920. From a judgment of that court, granting the prayer of the complaint, the petitioner appealed to the Supreme Court of the Philippines and that court, after hearing, affirmed, on November 28, 1921, the judgment thus appealed from, but without costs (record, pp. 13-16). Thereupon judgment was entered accordingly by the clerk on December 10, 1921 (record, pp. 16, 17). Petitioner's motion for a reconsideration was denied on December 21, 1921 (record, pp. 17-19), and on December 27, 1921, the petitioner, through the Attorney General of the Philippine Islands, duly excepted to the decision of the court denying his motion for a rehearing, and also to the final judgment therein, and gave notice of his intention to present this petition for a writ of certiorari. The petitioner then applied to the Supreme Court of the Philippine Islands for the retention of the record in said court pending the preparation, printing and certification of same, and for a stay of the judgment pending his application for a writ of certiorari (record, pp. 19, 20).

Second.—A certified copy of the record in the case, including the proceedings in the court to which the writ is asked to be directed, is furnished herewith as an exhibit.

STATEMENT OF FACTS.

The stipulated facts are these :

“That the plaintiff is a corporation sole, constituted under sections 154 to 164 of Act No. 1459 of the Philippine Commission, and is organized and operated for religious, beneficial, scientific and educational purposes in these Islands and in

its Missions in China, CochinChina and Japan, and that neither its net income nor part of its rents from whatever source it may come is applied to the benefit of any particular stockholder or individual, or of any of its members, and that no part of the whole or of some of its temporal properties belong to any of its members, who have no rights to the same, even in case of dissolution of the corporation.

"That the dividends and interests or profits and expenses which appear in Exhibit 1 of the defendant as the income of the plaintiff, constitute the income derived from the investments of the capital of the plaintiff corporation, which was invested, in the year 1913, nearly in the manner and form specified in Exhibit 2 of the defendant, and that the rents appearing in Exhibit 1 were derived from the properties which together with their valuations appear in Exhibit 3 of the defendant."

RULING OF COURTS BELOW.

Both the trial court and the Supreme Court of the Philippine Islands held that the respondent is exempt from the payment of income tax under the provisions of paragraph G (a) of the Act of October 3, 1913 (38 Stat., part I, 114, 172).

Grounds relied upon for the issuance of the writ.

ASSIGNMENT OF ERRORS.

I

The Supreme Court of the Philippine Islands erred—

(a) In holding that the respondent corporation was organized and was operated *exclusively* for religious, charitable, scientific, or educational purposes; and

(b) In not holding that the respondent corporation was engaged from March 31, 1913, to December 31, 1913, in such ordinary commercial

transactions as took it out of the provisions of the above mentioned paragraph "G (a)" of the Act of October 3, 1913, *supra*.

Wherefore the petitioner respectfully prays for a writ of certiorari, addressed to the Supreme Court of the Philippine Islands, directing that court to certify to this court the entire record in the case pending therein, entitled "Sagrada Orden de Predicadores de la Provincia del Santisimo Rosario De Filipinas, Plaintiff and Appellee, vs. W. Trinidad, as Insular Collector of Internal Revenue of the Philippine Islands, Defendant and Appellant," G. R. 17221, in order that the same may be reviewed and determined by this court as provided by law, and that the judgment of the Supreme Court of the Philippine Islands in said case may be reversed by this Honorable Court.

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate.

LOGAN N. ROCK,
Captain, Judge Advocate.

By.....
Attorneys for Petitioner.

CERTIFICATE OF COUNSEL.

I, Grant T. Trent, do hereby certify that I am one of the Attorneys for the petitioner herein and that I have carefully examined the foregoing petition, and, in my opinion, the same is well founded and the case is one in which the prayer of the petitioner should be granted by this Court.

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate.

Washington, D. C.
June 9, 1922.

In the Supreme Court of the United States

October Term, 1921.

No. —

W. TRINIDAD, AS INSULAR COLLECTOR OF INTERNAL
REVENUE OF THE PHILIPPINE ISLANDS, Petitioner,

vs.

SAGRADA ORDEN DE PREDICADORES DE LA PROVINCIA
DEL SANTISIMO ROSARIO DE FILIPINAS, Respondent.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

NATURE AND OBJECT OF THESE PROCEEDINGS.

While the instant case standing alone involves only 1,541.31 pesos or \$770, it is a real test case, for, if the errors complained of are permitted by this court to pass uncorrected, the Philippine Government will not only lose the annual income tax since 1913 which this respondent should pay, amounting as it does to a considerable sum, but also like revenue from other corporations and associations in the Philippine Islands, organized and operated in practically the same manner and along the same lines. We think the court can take judicial notice of this fact.

ARGUMENT.

Section 27 of the Act of August 29, 1916 (39 Stat. 545), which is substantially a re-enactment of Section 10 of the Act of July 1, 1902 (32 Stat., part I, 691, 695), provides that the Supreme Court of the United States shall have jurisdiction to review the final judgments and decrees of the Supreme Court of the Philippine Islands

in all cases "in which the Constitution or any statute, * * *, of the United States is involved, * * *." This review must now take place on certiorari as provided in Section 5 of the Act of September 6, 1916 (39 Stat. 726). It is the nature of the case at bar which is the test of the jurisdiction of this court. If a statute of the United States is here "*involved*," the inquiry will then arise "whether the matter is of sufficient importance in itself, and sufficiently open to controversy, to make it the duty of this court to issue the writ applied for in order that the case may be reviewed and determined as if brought here on appeal or writ of error" (*Law Ow Bew, Petitioner*, 141 U. S. 583, 587).

That paragraph G (a) of the Act of October 3, 1913, *supra*, is really and substantially involved in this suit cannot be seriously doubted, for the construction placed upon those provisions of that Act by the Supreme Court of the Philippine Islands, to the effect that the respondent corporation was "organized and operated *exclusively* for religious, charitable, scientific, or educational purposes," defeated the right of the Philippine Government to collect and retain the income tax in question, whereas an opposite construction would have sustained that right.

THE UNITED STATES REVENUE ACTS.

The Acts of October 3, 1913 (38 Stat., part I, 114), of September 8, 1916 (39 Stat., part I, 756), of October 3, 1917 (40 Stat., part I, 300), of February 24, 1919, will be hereinafter referred to as the law of 1913, 1916, 1917, and 1918, respectively.

Section 24 of the law of 1916 repealed section 11 of the law of 1913, providing for income tax, except that "it shall remain in force for the assessment and collection of all taxes which have accrued thereunder." The law of 1913 was extended to the Philippines (par. M).

The laws of 1916 and 1917 were repealed by the law of 1918, except for the assessment and collection of all taxes which have accrued thereunder. The law of 1918 does not apply to the Philippines, and the citizens thereof, who are not residents of the United States, are taxable only on income derived from sources within the United States. A local income tax, however, is provided for the Philippines by making the law of 1916, as amended, apply to them (Holmes, Fed. Taxes, 1920 Ed., p. 9). Paragraph 2 of Section 261 of the law of 1918 empowers the Philippine Legislature to amend, alter, modify, or repeal the federal income tax statutes in force in the Islands.

The pertinent provisions in the laws of 1913, 1916, and 1917, relating to exemptions, are as follows:

Par. G. (a) of 1913.—

*"Provided, however, that nothing in this section shall apply * * *, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, * * *."*

Section 11, No. 6, of 1916.—

"That there shall not be taxed under this title any income received by any—

** * * * **

"Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual."

Section 201 of 1917.—

"This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

** * * * **

(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eight, nineteen hundred and sixteen, as amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; * * *."

It will thus be seen that these exemptions apply only to a corporation or association. "In order to be exempt the corporation or association must meet three tests: (a) it must be organized and operated for one or more of the specified purposes; (b) it must be organized and operated exclusively for such purposes; and (c) no part of its income must inure to the benefit of private stockholders or individuals" (Holmes Fed. Taxes, 1920 Ed., p. 214).

Does the respondent corporation meet each of these tests? Sections 154 to 164, inclusive, of Act No. 1459 of the Philippine Commission is entitled "Religious Corporations." Under this Act, the bishop, chief priest, or presiding elder of any religious denomination, society, or church, may become a corporation sole for the administration of its temporalities, and all temporalities, estates, and properties of the entity shall be held in trust by him for the sole benefit of his religious denomination, society, or church, "including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof."

We therefore do not contend that the respondent corporation does not squarely meet the first test set forth by Mr. Holmes. This is admitted in the statement of facts for the petitioner therein agreed that the respondent is a corporation "organized and operated for religious, beneficial (*beneficencia*), scientific, and educational purposes."

We do insist, however, that the respondent corporation fails to meet the second test in that it was not organized and operated *exclusively* for religious, charitable, scientific

and educational purposes. In the first place, the respondent's administrator or manager, so-called in Act No. 1459, is authorized under the said Act to lease or rent any and all the corporation's real estate, including the buildings thereon, to invest and reinvest its income and capital in such commercial institutions or enterprises as he may see fit and finally to purchase and hold real and personal property for the corporation and to mortgage or sell the real property held by it upon obtaining an order from the proper court. And in the second place, it is admitted that the respondent was engaged in many of the ordinary commercial activities of every day life during the year 1913. It was from these sources that the respondent's income was derived upon which the tax was levied and collected.

From Exhibit Number 1 (record, pp. 10, 11), it appears that the respondent's income and expenditures for the calendar year 1913, according to its own declaration, were as follows: Income received from rents of houses and agricultural estates, 91,141.69 pesos; dividends from the Bank of the Philippines and various industrial companies or corporations, 95,918.04 pesos; profits from other investments and corporations, 54,239.19 pesos; grand total, 241,298.92 pesos.

Expenditures for expenses of the Provincial Father, subscription to newspapers, drafts remitted to Spain for subsistence of priest residing there, subsistence of priests of the corporation residing in Manila, interest paid on loans, interest on the insurance fund, fixed expenditures, interest paid to banks, losses sustained on sale of hotel stock, losses sustained on investment in a box manufacturing company, losses sustained on investment in drug store, sundry office expenses, other expenses, and depreciation on houses for rents, convent and church, 169,305.24 pesos.

RESUME.—Total gross income, 241,298.92 pesos; total expenditures, 169,305.24 pesos; total net income, 71,993.68 pesos.

The Collector of Internal Revenue, after investigation, found the amounts for income taxes to be the following: Income from rents of houses and agricultural estates, 90,092.70 pesos; from dividends on stock of the bank of the Philippines and various other companies or corporations, 96,465.54 pesos; from other corporations and profits on the sale of stocks, wine, chocolate, merchandise, religious articles, unclassified profits, and donations, 68,144.45 pesos; grand total income, 254,702.69 pesos. Expenditures same as stated in the respondent's declaration, except the collector did not permit a reduction of 58,937.67 pesos for drafts remitted to Spain for the subsistence of the priest residing there, and 1,367.38 pesos for interest credited to the insurance fund, leaving total expenditures of 69,745.88 pesos.

RESUME.—Total income for tax purposes, 254,702.69 pesos; total expenses allowed, 69,745.88 pesos; leaving a balance for taxation purposes of 184,956.81 pesos for the entire year. For the ten months' period covered by the Act, 154,130.68 pesos.

According to Exhibit 2 (record, p. 11), the respondent's capital of 380,041.76 pesos was invested in 1913 in the following institutions: The Bank of the Philippines, Manila ice plant, hotel, drug store, box manufacturing company, rope manufacturing company, cigar factory and an insurance company. And according to Exhibit 3 (record, p. 11), the respondent's real estate was valued in that year at 3,276,213.00 pesos, consisting of houses, agricultural estates and convent and church, the convent and church being valued at 1,888,353.00 pesos.

It is, therefore, clear that practically the entire amount of the respondent's income was realized from purely commercial sources. The result is that the respondent was not organized *exclusively* for religious, educational and charitable purposes but also for commercial purposes, and that it was not operated exclusively for such purposes. But the respondent contends that the means it employs, as set forth in the record of this case, of making its capital and properties produce income, do not destroy its character as a religious, charitable, or educational institution and consequently its right to exemption from taxation under paragraph G (a) of the law of 1913, because the petitioner admits that no part of such income is applied to the benefit of any particular stockholder, individual, or member of the institutions.

The fundamental ground upon which all exemptions in favor of corporations and associations organized and operated exclusively for the purposes stated in the laws of 1913, 1916 and 1918 are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the government to care for and advance the interests of its citizens.

While the relations between the respondent corporation, known by the short name of *Corporacion de Padres Dominicas*, and the Roman Catholic Apostolic Church are not set out in the record, it has long since been settled that all the property in the possession or under the control of that Order belongs to the Church and not to the Order, the latter being only a "religious community" incorporated in the former. This fact, however, can have no material bearing upon the issues under consideration.

What factors or elements are to be considered as controlling in deciding the question of the respondent's liability to taxation? We think it ought to be conceded

that if it be true that the entire profits derived by the respondent from the various sources stated in Exhibit No. 1 were devoted to the purposes of the Order, that fact would no more change the *nature* of its *business* than if such profits had been distributed among the members for investment in any private enterprise. The renting and leasing of the houses and large estates, the buying and selling of stocks of corporations and associations and the buying and selling of wines, etc., would still be commercial transactions pure and simple. It is no answer to this proposition to say that if the respondent is not permitted to invest its capital and profits in income producing enterprises, it would soon have to cease its activities for lack of funds, for all agree that the tax is levied upon the *net* income only and not upon the gross income or market value of the properties. We take it that no one could claim that the United States Steel Corporation would be changed to a charitable institution by devoting its entire profits to charitable purposes. Furthermore, no one will deny the fact that the properties of the respondent, other than the churches, convents and cemeteries, are liable, and properly so, for the ordinary taxes, such as are imposed upon the same character and kind of property owned by any other person or entity.

The policy of the Philippine Government in respect to the exemption of certain kinds of property from taxation was announced in 1901 in Section 48 of Act No. 183 wherein it was provided that "lands or buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for profit, shall be exempt from taxation, but such exemption shall not extend to lands or buildings held for investment, though income therefrom be devoted to religious, charitable, scientific, or educational purposes." Although the Supreme Court of the Philip-

pine Islands adopted the American rule of strict construction in a modified form in respect to exemption of property from taxation (*The Roman Catholic Apostolic Church v. Hastings et al.*, 5 Phil. Reps. 701), we have been unable to find any holding of that court bringing "non-sacred" property of the Church within the statute above quoted.

The dominant purpose in use made of the houses, estates, etc., of the respondent is to obtain *revenue* or *profit*, although it may be applied to the general objects of the Order. This is *the* test.

ADMINISTRATIVE RULINGS.

The Treasury Department of the United States, in construing paragraph 6 of Section 231 of the law of 1918, which is in this respect essentially the same as the above quoted provisions of the law of 1913, held that:

"(2) Where a religious corporation owns a large quantity of farm land and works it, and also manufactures and sells clothing and other articles for profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society." (Art. 517, Regulations 45, 1920 Edition, published January 28, 1921.)

This Regulation rests upon various opinions of the Solicitor of Internal Revenue of the United States.

In Law Opinion 550 (June 3, 1918) of the Solicitor of Internal Revenue of the United States the claim for exemption of the United Society of Believers (commonly known as Shakers) under Section 11 (a) Sixth of the law 1916 was considered. The purpose of the society was stated to be "faithfully and honestly to occupy, improve and diffuse the various gifts and talents, both of a spiritual and temporal nature, with which Divine wisdom has blest

us, for the service of God, for the honor of the Gospel, and for the mutual protection, support, comfort and happiness of each other as brethren and sisters in the Gospel, and for such other pious and charitable purposes as the Gospel may require." The society owned some two thousand acres of land with farm buildings thereon. In denying the exemption the Solicitor said, among other things, that:

"The society in question appears to fulfill the first and third of these conditions (referring to the conditions above set forth and copied from Holmes Fed. Taxes); not, however, the second. Although a religious corporation, it is not 'organized and operated *exclusively* for religious purposes.' Part of its operations are purely industrial in character. It owns 2000 acres of farm land, with barns and other buildings thereon. It is forced to make 'a large expenditure of money' in obtaining the labor necessary to work this land. The members also make medicines, fancy articles and clothing, some of which is sold to the public. An association with such extensive industrial activities cannot reasonably be said to be operated 'exclusively' for religious purposes. This is true even though the net income of the society is applied to its general purposes, no part of it going to individual members."

In Committee on Appeals and Review Recommendation 673 (October 17, 1921) the Solicitor's office had under consideration the claim for exemption of The Independent Order of Foresters. In holding that this order was removed from the exempt class specified in Section 231 of the law of 1918 it was said, among other things, that:

"We are presented with the question as to whether the dominating control of a number of other corporations engaged in ordinary industrial pursuits destroys that exemption. In Solicitor's

Opinion 20 it was said 'if an organization is actually operated in a non-exempt manner * * * it is not entitled to exemption.' Also in Solicitor's Memorandum 431 it was stated generally that a religious corporation owning property in excess of its legitimate needs 'thereby carrying on an industrial pursuit distinct from its religious activities' is not exempt. See also Law Opinion 550 ('Shakers') and Solicitor's Memorandum 341 (Nutterische Bruder Geneinde). In denying exemption under Section 231 (11) it was said in Solicitor's Memorandum 952 that where a society of fruit growers 'departs from this purpose (operating exclusively as sales agent) and engages in an ordinary business pursuit—such as the buying and selling of fruit—it is thereby removed from the exempted class.' See also 31 Ops. Atty. Gen. 403; Solicitor's Memorandum 615 and 902."

Law Opinion 550, *supra*, was approved and followed in Solicitor's Memorandum 341 of July 9, 1918. In that case the Hutterische Bruder Gemeinde was incorporated for the purpose of "engaging in, carrying on and promoting the Christian religion, religious teachings and worship." It owned land and grist mills which it operated. The income was used in supporting the corporation, its members and their families, and in the purchase of more land to be used in the same manner. The members had no right, title or interest in or to any of the property or income. The corporation was denied exemption, not on the ground that it was not a religious corporation, but because it was not "exclusively organized and operated for religious purposes."

The opinions of the Solicitor of Internal Revenue of the United States, above cited, are not published in pamphlet form but are available in the Solicitor's office. These opinions are cited for the purpose of showing the foundation upon which the above quoted Regulation rests.

The practical construction of a statute by those charged with carrying it into effect is entitled to great weight when the statute afterwards comes before the court for construction, and when such departmental construction has been long in use, as in the instant case, so that the act has been enforced according to such construction for several years, the length of time should be an additional argument in favor of its validity in cases of doubt. In *Schell v. Fauche*, 136 U. S. 562, it was said:

"In all cases of ambiguity, the contemporaneous construction, not only of the courts, but of the Departments, and even of the officials, is universally held to be controlling."

In *Maryland Casualty Co. v. United States*, 251 U. S. 342, 385, the court said:

"It is settled by many recent decisions of this court that a regulation by a department of government, addressed to and reasonably adapted to the enforcement of an Act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict with the express statutory provision. *United States v. Grimand*, 220 U. S. 506; *United States v. Birdsall*, 233 U. S. 223-231; *United States v. Morehead*, 243 U. S. 607."

The Government of the Philippine Islands v. El Monte De Piedad Y Caja De Ahorros De Manila, 35 Phil. Reps. 42, was an action to recover internal revenue taxes assessed on the monthly deposits and the capital employed by the defendant from the first of August, 1904, to June 30, 1914. The defendant is an institution organized in accordance with the canon law, having been created by the royal order of the King of Spain of July 8, 1880, existence an institution for the safe investment of the made under the royal patronate powers then existing in the Crown of Spain. That royal order brought into

savings of the poor classes and to assist the needy in time of need by loaning such savings to them at a low rate of interest. The theory upon which the tax was levied and assessed was that the defendant was a bank within the definition of Section 110 of Act No. 1189, known as the Internal Revenue Law. The exemption was sought on the ground that the defendant was a savings bank. The court found and held that the defendant was a profit-making institution, although it may not have been designed as such, and that the profits derived from the investments and the deposits belong to the institution itself.

In *Bank of Commerce v. Tennessee*, 161 U. S. 134, 146, the court, among other things, said:

"These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded."

CONCLUSION.

To the end that the errors complained of may be corrected, we respectfully ask that the case be reviewed by this Honorable Court.

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